IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1729 OF 2003

IN

SUIT NO. 1688 OF 2003

Cyrus Vazifdar .....**Plffs.**
vs.
Darayus Vazifdar .....**Defnds.**

NOTICE OF MOTION NO. 2917 OF 2003
IN
0 **SUIT NO. 1688 OF 2003**

Cyrus Vazifdar .....**Plffs.**
vs.
Darayus Vazifdar .....**Defnds.**

J.P. Cama a/w. Ms. S. Kher i/b. RMG Law
for the plaintiffs.
Mr. Milind Sathe with Mr. Sagar Kadam
i/b. S. Mohomedhbhai and Co.
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 23rd September, 2005.

P.C. :.

1. Notice of Motion No. 1729 of 2003 is taken out inrespect of the flat premises being Flat no.

3A,II, Palazza, Little Gibbs Road, Mumbai-400 006.

2. The plaintiff has claimed 50% share in the said property and is seeking partition of the said flat. Both the parties i.e. the plaintiffs and the defendants are presently residing together in the said premises. There are serious disputes between the parties and it is the case of the plaintiff that it is not possible to reside together in the said premises. In that view of the matter he has sought relief of division of the property by putting up partition wall. Learned counsel for the defendant states that the partition of the said premises is not possible and he disputes that the said property can be temporarily partitioned. Looking at the kind of disputes between the parties I am of the opinion that minimum protection be given. Learned counsel for the plaintiff states that the defendant has got revolver with him. Learned counsel for the defendant states that the defendant is a having a licence of the said revolver. I am of the opinion

that looking at the disputes between the parties it is not advisable that any party be permitted to retain weapons such as revolver in the said suit premises. In that view of the matter ad-interim order in terms of prayer clause (e). In so far as prayer clause (d) is concerned there is an injunction sought restraining the defendant from putting obstruction in the common area of the said flat. The common area is to be utilised by both the parties and neither party can put any obstruction including plant in the said common area. In so far as prayer clauses (a) and (b) are concerned which is for the partition of the suit such a relief is not possible to grant at the interim stage. Thus the motion is made absolute in terms of prayer clause (c) and (d) only. Both the parties will keep the common area vacant and empty without putting any obstruction. The defendant is also directed to inform the plaintiff the time and date of removing the said revolver from the suit premises.

4. In so far as Notice of Motion No. 2917 of 2003 is concerned the said motion is taken out by the defendant for buying out of the plaintiff by offserin to pay 50% of the flat value. There are disputes about the valuation of the flat and date which is to be taken into consideration for valuation of the flat. The said relief cannot be granted only at the interim stage and such relief can be granted at the final hearing of the suit. Motion is disposed off accordingly. No order as to costs.

sd/-

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